IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 521 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI C BHATT

Versus

LAXMANBHAI NAUBHAI

Appearance:

MR KI SHAH for appellant

MR KH DAMANI for Respondent No. 1

Mr.U.R. Bhatt, APP for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/02/2001

ORAL JUDGEMENT

1. Food Inspector, Surat Municipal Corporation (original complainant), by filing this appeal, has challenged the judgment order dated October 21, 1988

passed by the learned Judicial Magistrate, First Class, (Municipal), Surat, in Criminal Case No.28 of 1987, by which judgment, the learned Magistrate acquitted respondent No.1 from the charges framed against him under Section 7 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: On September 7, 1987, around 6 a.m., complainant, M.C. Bhatt, along with his peon, had gone to the compound of Purshottam Ginning Factory, Varachha Road, Surat. At that time, respondent No.1 was carrying a can of milk on his by-cycle. The complainant asked his peon to call one independent panch and, in presence of the said panch, purchased milk of buffalo in the quantity of 8 liters. A preservative was added in the said quantity of milk, and the said quantity of milk was divided into three parts and each part was filled in three clean and dry bottles, and, after following the usual procedure under the Act, the said three sample bottles were sealed and seized under a panchanama. One sample bottle was sent to the Public Analyst for analysis. On receipt of the report of the Pubic Analyst, it was detected that the said milk did not conform to the standard prescribed under the Act. After obtaining sanction from the Competent Authority, the complainant lodged a complaint against respondent No.1 for the offences punishable under Section 7 of the Act in the Court of learned Judicial Magistrate, First Class (Municipal), Surat, which came to be numbered as Criminal case No.28 of 1987.

3. The complainant was examined at Exh.15. After the examination of the complainant, charge Exh.30 was framed against the respondent No.1 for the abovementioned offences. The charge was read over and explained to the respondent No.1 wherein he had pleaded not guilty and claimed to be tried. To prove the charge against respondent No.1, the complainant produced voluminous documentary evidence consisting of complaint, notification of the Government appointing the complainant as Food Inspector, report of the Public Analyst, etc. to prove the charges against the respondent.

4. The learned Magistrate, on appreciation of oral and documentary evidence, acquitted respondent No.1 mainly on the ground that the report produced by the complainant did not relate to the sample of milk collected from respondent No.1, which has been challenged by the original complainant by filing this appeal.

5. I have gone through the record and proceeding of

the trial court produced on the record of the appeal. The complainant, in his evidence, had admitted that the report of the Public Analyst was not the report of the milk which was collected from respondent No.1. In view of the above admission of the complainant, the learned Magistrate was justified in acquitting respondent No.1 from the charges framed against him. The case of the prosecution solely rests on the report of the Public Analyst which indicates that the milk collected from respondent No.1 did not conform to the standard prescribed under the Act. If the report, on which the reliance was placed, did not relate to the milk collected from respondent No.1, in my opinion, the prosecution is liable to fail on that ground alone. The code number which was mentioned in the report of the Public Analyst was a different code number than a code number which was given to the sample collected from respondent No.1. Therefore, the learned Magistrate had committed no error in acquitting respondent No.1 from the charges framed against him. It may also be observed that the complainant had led no evidence that he had complied with mandatory provision of Rule 14 of the Prevention of Food Adulteration Rules, 1955, as no evidence was led by him that he had collected the sample of milk in clean and dry bottles. In view of the aforesaid flaws in the case of the prosecution, in my opinion, this appeal cannot be entertained.

6. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated October 21, 1988 passed by the learned Judicial Magistrate, First Class, (Municipal), Surat, in Criminal Case No.28 of 1987, is confirmed.

February 17, 2001 (M.H.Kadri, J.)
(swamy)